

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GAIL ANN O'GRADY,	)	CV 08-5065 SVW (SSx)
Plaintiff,	)	
	)	ORDER GRANTING PLAINTIFF'S
v.	)	MOTION TO REMAND TO STATE COURT
	)	[19]
WACHOVIA BANK, N.A., et al.,	)	
	)	
Defendants.	)	JS - 6
_____	)	

**I. INTRODUCTION**

Plaintiff brings this Motion to Remand on the grounds that this Court does not have federal subject matter jurisdiction. For reasons set forth below, Plaintiff's Motion to Remand is hereby granted, and this action is remanded to the Superior Court for the State of California in and for the County of Los Angeles.

**II. BACKGROUND**

On July 2, 2008, Plaintiff Gail Ann O'Grady ("Plaintiff" or "O'Grady") commenced this matter in Los Angeles County Superior Court against: (1) Wachovia Bank, N.A., Wachovia Trust Company of California, and American Mortgage Network, Inc. (collectively

1 "Wachovia"); (2) Wells Fargo & Company, Wells Fargo Home Mortgage,  
2 Inc., and America's Service Company; (3) Countrywide Financial Corp.,  
3 Countrywide Home Loans, Inc., and America's Wholesale Lender; (4) All  
4 American Real Estate Services; and (5) Cal-Western Reconveyance  
5 Corporation (collectively "Defendants"). Plaintiff alleges nine  
6 state law causes of action arising out of Defendants' alleged illegal  
7 and unfair conduct leading to the foreclosure on Plaintiff's home.

8 On July 31, 2008, Wachovia removed the case to this Court  
9 pursuant to 28 U.S.C. §1441. Wachovia argues that removal is proper  
10 because Plaintiff's claim under California's Unfair Competition Law  
11 ("UCL"), Cal. Bus. & Prof. Code § 17200, turns on whether Wachovia  
12 violated federal law, specifically the Real Estate Settlement  
13 Procedures Act ("RESPA"), 12 U.S.C. § 2605, and Regulation X, 24  
14 C.F.R. § 35000.21(e). (Notice of Removal 5.) Plaintiff argues that  
15 because she alleges both state and federal predicate violations under  
16 the UCL, her claim does not turn exclusively on federal law, and  
17 therefore, the Court does not have federal subject matter  
18 jurisdiction.

### 19 20 **III. LEGAL STANDARD**

21 An action is removable to federal court only if it might have  
22 been brought there originally. 28 U.S.C. § 1441(a). The Ninth  
23 Circuit has a "strong presumption against removal." Gaus v. Miles,  
24 Inc., 980 F.2d 564, 567 (9th Cir. 1992)(quotation omitted). Courts  
25 must "strictly construe the removal statute against removal  
26 jurisdiction," and "federal jurisdiction must be rejected if there is  
27 any doubt as to the right of removal in the first instance." Id.  
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1 Further, the defendant has the burden of establishing that removal is  
2 proper. Id.

3 Wachovia argues that federal subject matter jurisdiction  
4 attaches to Plaintiff's UCL claim because it "arises under" federal  
5 law. (Opp. 2) "The rule is well settled that a state claim 'arises  
6 under' federal law 'if the complaint, properly pleaded, presents a  
7 substantial dispute over the effect of federal law, and the result  
8 turns on the federal question.'" Berg v. Leason, 32 F.3d 422, 423  
9 (9th Cir. 1994) (quoting Guinasso v. Pac. First Fed. Sav. & Loan  
10 Ass'n, 656 F.2d 1364, 1365-66 (9th Cir. 1981), cert. denied, 455 U.S.  
11 1020 (1982)). To determine arising under jurisdiction, courts  
12 examine "whether the federal element in the claim was 'pivotal,' or  
13 'substantial,' as opposed to merely 'incidental,' or whether it was  
14 'direct and essential' as opposed to 'attenuated,' or 'paramount' as  
15 opposed to 'collateral.' Thus, the resolution of the federal question  
16 must play a significant role in the proceedings." Berg, 32 F.3d at  
17 424.

#### 18 19 **IV. ANALYSIS**

20 California's UCL borrows violations of other laws and treats  
21 them as independently actionable. "However, the law does more than  
22 just borrow. The statutory language referring to 'any unlawful,  
23 unfair or fraudulent' practice . . . makes clear that a practice may  
24 be deemed unfair even if not specifically proscribed by some other  
25 law." Cel-Tech Comm., Inc. v. Los Angeles Cellular Tel. Co., 20 Cal.  
26 4th 163, 180 (Cal. 1999).  
27  
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1           In Rothstein v. Option One Mortgage Corp., the plaintiff based a  
2 UCL claim on alleged violations of federal law, RESPA and Regulation  
3 X, and alleged violations of California law, California Financial  
4 Code section 50505. 2003 U.S. Dist. Lexis 20708, at \*5 (C.D. Cal.  
5 Nov. 4, 2003). The Rothstein court rejected the defendant's arising  
6 under arguments, and remanded the matter on the grounds that the  
7 plaintiff's UCL claims were "based, in part, on federal laws which  
8 are not within the federal court's exclusive jurisdiction, and  
9 therefore violations of those laws can be resolved in state court."  
10 Id. at \*7.

11           Here, Plaintiff's UCL claim is also based on both state and  
12 federal law. In the Complaint, Plaintiff alleges that "Defendants  
13 [sic] conduct described herein constitutes unlawful, unfair, and  
14 fraudulent business practices in violation of" California's UCL.  
15 Plaintiff then proceeds to list five practices to support the claim.  
16 Of the five practices, four are state law violations and the last is  
17 a violation of RESPA and Regulation X.

18           Wachovia argues that of the five practices listed, Wachovia, as  
19 a lender, could only have violated RESPA and Regulation X. (Opp. 2.)  
20 Wachovia's argument asks the Court to parse the state law claims, and  
21 make what is essentially a factual determination that none of the  
22 state law violations could apply to Wachovia even though they are  
23 alleged against *all* defendants. A motion for remand is not the  
24 appropriate time for this Court to decide whether the underlying  
25 claim is legally tenable to a defendant.

26           Nevertheless, even if the four state law violations specifically  
27 listed in the UCL cause of action do not apply to Wachovia, the  
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1 previous three causes of action listed in the complaint: (1) fraud,  
2 deceit, and civil conspiracy to commit fraud and deceit; (2)  
3 negligent misrepresentation; and (3) declaratory relief, which  
4 Plaintiff "realleges and incorporates by reference" within the UCL  
5 cause of action, apply to Wachovia. (Compl. ¶ 89.) These claims also  
6 qualify as alleged predicate violations of UCL. Thus, Plaintiff's UCL  
7 claim against Wachovia is predicated by both federal and state  
8 violations. Therefore, the federal question of whether Wachovia  
9 violated RESPA and Regulation X becomes collateral because the  
10 Plaintiff could support the UCL claim solely on state law grounds.


11 This Court is obliged to remand if there is any doubt as to the  
12 right of removal. Gaus, 980 F.2d at 567. Here, Plaintiff's alleged  
13 state law claims are enough to create sufficient doubt as to whether  
14 the UCL cause of action relies solely on federal law grounds.

15  
16 **V. CONCLUSION**

17  
18 For the reasons discussed above, Plaintiff's Motion for Remand  
19 is GRANTED.

20 IT IS SO ORDERED.

21  
22 DATED: September 10, 2008

23   
24 STEPHEN V. WILSON  
25 UNITED STATES DISTRICT JUDGE  
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